IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

HOMELAND INSURANCE COMPANY OF NEW YORK,

Plaintiff,

vs.

POWELL VALLEY HOSPITAL DISTRICT, POWELL VALLEY HEALTHCARE, INC., HEALTHTECH MANAGEMENT SERVICES, INC., JEFFREY HANSEN, M.D., and WILLIAM D. PATTEN,

Defendants,

AND

HEALTHTECH MANAGEMENT SERVICES, INC., and WILLIAM D. PATTEN,

Counterclaimants,

vs.

UMIA INSURANCE, INC., and LEXINGTON INSURANCE COMPANY,

Counterclaim-Defendants,

AND

POWELL VALLEY HOSPITAL DISTRICT, POWELL VALLEY HEALTHCARE, INC., and JEFFREY HANSEN, M.D.,

Cross-Claimants,

vs.

UMIA INSURANCE, INC., and LEXINGTON INSURANCE COMPANY,

Crossclaim-Defendants.

Case No. 15-CV-00031-J

Cheyenne, Wyoming
January 14, 2016
9:41 a.m.

TRANSCRIPT OF INITIAL PRETRIAL CONFERENCE

BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE

Proceedings recorded by mechanical stenography; transcript produced by computer.

APPEARANCES:

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(Proceedings commenced 9:41 a.m., January 14, 2016.)

THE COURT: Good morning, everyone.

COUNSEL: Good morning, Your Honor.

THE COURT: Welcome, and please be seated.

Well, Miss Studer, it's at your invitation that we're all here today. I don't know whether to thank you or to throw something at you. But it's good to note that excellent counsel are trying to sort all this out and are hard at work in connection with this matter.

Tell me where you are presently.

MS. STUDER: Your Honor, I'd like to introduce Mr. Chuck Spevacek, if I said his name correctly, to the Court and --

THE COURT: Pronounced Spevacek?

MR. SPEVACEK: I say it Spevacek, Your Honor.

MS. STUDER: Spevacek. See. And I think he'll take the lead, Your Honor.

MR. SPEVACEK: Thank you.

Good morning, Your Honor.

THE COURT: Good morning.

MR. SPEVACEK: Thank you for the courtesy of allowing me to appear in your court. We've had our scheduling conference, our Rule 26(f) conference. The parties worked very cooperatively, and I think we've produced a fairly

detailed joint report of our meeting.

THE COURT: Whoever took responsibility for that, thank you.

MR. SPEVACEK: Since we're isolated here on the plaintiff's side of the table, Your Honor, we'll take credit for doing most of the work on it.

THE COURT: All right.

MR. SPEVACEK: I think the only thing that's at issue is whether the Court is inclined to phase discovery between the substantive issues of whether there's insurance coverage or not, whether a policy should be rescinded, and the counterclaims that have been made by the policyholders that the denial of coverage or the assertion of grounds for a decision were made in bad faith or not.

THE COURT: All right. Another complication I see in the timing of this case is the likelihood that there will be additional parties coming in as these cases settle. And there are 22 of them, if I counted correctly, and there are about three of them that are in the process of settling by the Hospital presently. Maybe I need a report on what's going on there.

MR. COPENHAVER: Your Honor, it's Tracy Copenhaver, counsel for the Hospital. We are still in the process of negotiating that. At this point it looks like one is fairly certain.

THE COURT: Is this Stambaugh?

MR. COPENHAVER: Correct. And I'm still -- thought I would know by today, but I don't, on the Wilson matter. As far as the other four, I -- I couldn't tell you whether that's going to happen or not.

THE COURT: How do you -- looking ahead in this matter, what do you see happening as those cases are resolved or settlement is achieved?

MR. COPENHAVER: Uh, well, it is likely that there will be a partial assignment of our claim against the insurers for refusing to cover those claims to those individual plaintiffs. So to the extent they refused to cover the Stambaugh claim, and we believe that's in bad faith, those claims will be assigned to the Stambaughs, and I believe they will become the real party in interest.

THE COURT: And they'll be seeking consent to intervene?

MR. COPENHAVER: Yes, they will. I mean, I think that they will have the legal right to pursue that claim because they'll own it at that point. We won't have that right any longer.

MR. SPEVACEK: Legally, Your Honor, it really won't have much impact on the case. When the original case was pled, it was determined there wasn't a need to join all the pending claimants, and they're not joined. So to the extent

that they were to settle with any of the policyholders and take an assignment of the policyholders' rights, they would just step into the position the policyholder was in in the context of where we are in the litigation. So there might be a change of counsel and there might even be a change of name in the case caption if you substitute the name of the claimant for the Hospital as the real party in interest as to that particular claim, but all the policy defenses, all the factual issues, everything else, are going to remain the same. They possess no independent claim that would be new to the case just because they were brought in because they settled. They would simply be standing in the shoes of whichever policyholder they settled with by way of the assignment. So it would be a change of faces, but it wouldn't change the makeup of the litigation any.

THE COURT: And so you would consider them to be bound by any discovery that may have occurred up to that point and --

MR. SPEVACEK: They would have to be, Your Honor.

THE COURT: All right. Miss Kellam, who do you wish to introduce today?

MS. KELLAM: Thank you, Your Honor. I'd like to introduce Catherine Naltsas from California. She and I both represent Lexington.

THE COURT: All right.

MS. NALTSAS: Good morning, Your Honor.

THE COURT: Welcome.

MS. NALTSAS: Thank you.

THE COURT: How does Lexington view its position in this case?

MS. NALTSAS: We are a crossclaim/counterclaim defendant and, um, we've answered the crossclaim and counterclaim at this time. We don't see that there's any coverage for the claims under our policy, and I think that will be borne out throughout discovery.

THE COURT: Very well. Thank you.

Mr. Copenhaver.

MR. COPENHAVER: Yes, Your Honor.

THE COURT: You are representing the Powell interests.

MR. COPENHAVER: Yes, as well as Dr. Hansen, who was insured under the same policy as an employed physician with Powell Valley Healthcare. So -- and it's our position that the hospital purchased insurance for every minute of every day that it's been in existence for years, and that there's been no gap in coverage, and that we properly tendered claims, and that it's been wrongfully denied. You know, our position is the volume of claims has resulted in these decisions to not provide coverage, that the policy language themselves extend coverage, and that the denial is wrongful, and that we're

entitled to coverage, attorney fees, and damages for the refusal to cover.

There has now been asserted by UMIA a claim that they are entitled to rescind our contract, which we understand to be just the -- for the policy year from August 1, 2014 to August 1, 2015. I hopefully would ask that they clarify that. I think that's been the understanding, but, um, there are numerous claims brought during that claim year, and rescission affects not just the doctor that really is at the heart of this matter, but rescission would affect every doctor, every nurse, everybody for that entire year that provided service to all the patients. And they're seeking to rescind that coverage, and we believe that is wrongful as well. And we intend to seek damages and attorney fees.

THE COURT: Very well.

Miss Vilos.

MS. VILOS: Good morning, Your Honor.

THE COURT: Good morning.

MS. VILOS: This is Joe Ramirez from our Denver office of Holland & Hart, and we represent HealthTech Management Services along with Bill Patten, who is the former CEO of the Powell Valley Hospital. And I am going to defer to Joe, because he is taking the lead on this case, to express our position.

THE COURT: Good morning, Mr. Ramirez.

MR. RAMIREZ: Good morning, Your Honor. How are you?

We share the very same view; we are fully aligned with the hospital and Mr. Copenhaver. Although we are technically not the named insured on the policy, I think there is an argument that by definition in the -- in the One Beacon policy, the Homeland policy, that we would qualify as an insured based on the allegations that the plaintiffs are making in the underlying cases. So to the extent One Beacon believes that the coverage is limited to just to the additional insured endorsement, we vehemently disagree. We think we have full rights as an insured under that policy, and we intend to prove that during this proceeding.

THE COURT: Very well.

Miss Tiedeken.

MS. TIEDEKEN: Your Honor, I'd like to introduce Jon Sands to the Court. He is from Denver, and he and I are representing UMIA, and I'll let him express our position.

MR. SANDS: Good morning, Your Honor.

THE COURT: Good morning.

MR. SANDS: Thank you. I echo Mr. Spevacek's appreciation for letting us appear here.

Our position is that, number one, there are policy defenses because of specific issues. These are claims-made policies, and there are certainly issues as to whether certain claims were first reported, first made during the policy

period. So there are policy defenses. We are also seeking rescission of that policy period, and yes, right now it is the 2014 to 2015 policy period under the Wyoming Statute that I think -- I'll say governs rescission claims. So we think the denial of coverage -- denials of coverage that we have made are entirely appropriate based on the policy language and the facts leading up to what went on here. Of course, I'm not going to get into all the evidence, and I assume the Court doesn't want me to do that, but, uh -- so that's really where we are.

UMIA is participating in the defense of some of the claims. So I think we all have this issue that there are some claims that have been denied outright, there are some that are being defended under reservation of rights, so they're not all the same. And I think we've counted something like 21 lawsuits that are -- that are out there pending, and so we're going to have to sort through those, the claims that have actually been made to the various carriers, and figure out whether we're dealing with policy defenses, rescission.

And then this bad faith piece is very important, obviously, and that's -- those are the cases that can take a lot of time and expense and expert evidence and things like that. And so at some point -- and I echo, again, Mr. Spevacek's comments that one of the things we're going to be discussing or asking the Court if we can discuss, rather,

is this kind of bifurcated process. And Mr. Copenhaver and I have had some lengthy discussions about mechanically how that might happen, but that is an issue here because I think there hopefully would be a way to get to the coverage piece before we would get to the tort piece, that is, the bad faith piece.

THE COURT: I anticipate motions.

MR. SPEVACEK: Yes, Your Honor. In fact, we specifically wrote the joint meeting report as indicating the desire to not put any restrictions on us, other than those already contained -- that might be contained within Rule 56, on being able to make motions. Because this is a big and complex case, and we think that it would be advantageous if there are certain parts of it that we think we can dispose of right away on dispositive motion, we all shouldn't have to wait for eight months of discovery before we can bring a dispositive motion to have something taken care of. And if someone opposing the motion thinks that there's discovery that needs to be done in order for them to oppose the motion, Rule 56 already provides the vehicle for dealing with that, so we didn't feel like rewriting the federal rules in our joint report.

So there will definitely be dispositive motions. I ultimately think at the end of the day after discovery is completed the entire claim will be resolved on the basis of dispositive motions, but there are some that we believe we can

bring earlier than others. And the more early dispositive motions we bring on discrete claims or discrete issues, the more we streamline the litigation for all of us and for the Court.

THE COURT: I would hope that that would occur. It just seems to make good sense to tee up those issues as quickly as they can be presented to the Court and --

MR. SPEVACEK: In fact, we have one in mind already, Your Honor, we think we can bring relatively quickly.

THE COURT: All right. And then if a motion under 56(f) is necessary to do some discrete discovery, it can be -- can be done, and that makes good sense.

MR. SPEVACEK: Your Honor, the other thing I would point out from Homeland's standpoint, just so the Court is aware, we too are defending the Powell entities against some of the cases under a reservation of rights. There are some claims against the Powell entities that we have denied. It all has to do on when the claims were made. Our position, as set forth in the pleadings, is that we think these are all related claims and they relate back to a claim that was made before our policy period incepted. If they're not related claims, well, then they still have to be made within our policy period, and there were some claims against the Powell entities that were made after the expiration of our policy into the time period of Mr. Sands' client's policies. So with

regard to the Powell entities, we are defending under a reservation of rights the claims that were made during our policy period.

We have all the same defenses as to the HealthTech entities that we do as to the Powell entities, but we have an additional defense, we think, based on their status as an insured, and we're not defending any of the claims against the HealthTech entities.

THE COURT: Very well.

The parties have told the Court that this matter is one that they feel is complex. I think I agree. The number of parties that are involved potentially in this case, as well as those who are before the Court, would seem to signal complexity. The fact that we're talking about phased -- the possibility of phased discovery or some control -- continuing control by the Court over the discovery process signals complexity in this case. So I'm not -- am not prepared to argue with anyone as to the decision of counsel that this is complex and that additional time may be required to prepare it.

It seems to me that there's a real benefit to the Court in bringing to the Court dispositive or motions that may streamline this case going forward at an early time just in terms of educating the Court as to the issues that exist by and between the parties and keeping it in the forefront of the

business of the Court.

As you all know, the life of a federal judge is affected substantially by the fact that a number of the people who work for the Court are there for one year, and this case naturally will be covering one or more years, and so other people are going to have to become educated as we move forward. And it really helps to keep the Judge fully apprised and educated as to where the case is and conscious of it as it goes forward, I think. Others may disagree.

The parties have indicated they've held their Rule 26(f) conference in this matter, which is reflected in the joint submission of the parties. The parties have signaled to the Court in their joint report when they will commence written discovery and when they will provide their initial disclosures under Rule 26(a).

As I understand, Mr. Spevacek, today is your day.

MR. SPEVACEK: We will be filing ours later this afternoon, Your Honor.

THE COURT: Thank you very much.

And that the remaining parties have agreed that February 1st will be their day to do their initial disclosures and start that process. And there is an indication that the parties are formulating and moving forward presently with their initial interrogatories. Is that --

MR. SPEVACEK: As a preliminary matter, Your Honor,

we believe that there's quite a bit of information that's going to be exchanged that's going to require the entry of a protective order first, and we've set January 25th as the date that we would submit to the Court a draft of a protective order for Your Honor's consideration. But we believe that there needs to be a protective order in place before quite a bit of the information can be exchanged if for no other reason that a lot of it is going to be dealing with patient records.

THE COURT: Thank you.

MR. SANDS: If I may, Your Honor, on that subject, just to alert the Court, another complexity arises because there are cases that are being defended by UMIA, and there might -- and there will be privileged information within those files that other parties to this case should not be allowed to see, but, for example, Mr. Copenhaver's client would be allowed to see. So we're going to have to redact from some of the files we might be producing to certain parties but not to the insureds, for example. So that's something we're going to have to sort through, and I guess we'll certainly talk to everyone about that and decide how we go about that, but there are things -- because UMIA is participating in the defense of some of the underlying malpractice cases, there will be, for example, privileged communications from defense counsel in those cases that shouldn't be disclosed to others. There may be health information that shouldn't be disclosed to others,

as Mr. Spevacek has referenced. So we're also going to be producing different redactions in these files to the parties. I don't see any way around that.

MR. SPEVACEK: None of the claimants are in the suit, though. So, I mean, I agree with you completely. I have no intention of prejudicing the Hospital's defense by producing, in the course of discovery, claim file information that the underlying claimants would love to be able to see but they're not parties to the suit, which is why I think that the protective order needs to allow us to be able to have full disclosure between us but make sure that the pending claims aren't impacted by the fact we're going to be exchanging information concerning the handling of those claims.

THE COURT: So we'll need to protect that information through the Clerk's Office.

MR. SPEVACEK: Right.

MR. COPENHAVER: I mean, there's -- I guess that's why it's complex, Judge, is we've obviously got HIPAA issues that we have to comply with, and the discovery is going to have patient information in it, and so we may address that and may need to add some language to the protective order to make it clear that, uh, that applies to HIPAA information and that that is somehow kept confidential and protected. I don't know that I envision filing everything under seal, but we probably need to work through that a little bit between now and

the 25th.

And then, as both Jon and Chuck have mentioned, there is going to be communication that is between the insureds and the insurer relating to coverage that has got to be protected so that it doesn't go to counsel and the parties that are bringing these lawsuits. Now, as they become parties to this litigation -- for example, if Stambaughs become a party, that's probably not a problem because Mr. Fix only represents one party, but if counsel that represents other plaintiffs in lawsuits that are pending but are not involved in the assignment, that is going to become a very difficult issue. It's not happened, it may not happen, but I'm just giving you a heads-up. And obviously we all need to think and deal with that if it happens. We don't need to deal with it today.

MR. SPEVACEK: Yeah, I agree with Tracy. If any of the underlying claimants become parties to the litigation because their cases have settled, then the concerns about disclosure of information that would impact an ongoing piece of litigation is a little bit allayed. It's also the reason why they aren't joined in the suit, nor do they need to be joined in the suit.

There's also two types of discovery that we're talking about here that needs to be protected from them. As we talked about, some of these cases are being defended by the insurance companies, and as a result there's communication

going back and forth between the policyholders and their insurers having to do with the defense of that case that absolutely cannot get in the hands of the people who are prosecuting the claims against the policyholders.

The other, then, has to do with internal information from the insurers as to how they think about the cases, how they evaluate them, which I'm not sure is ever going to be discoverable, but my guess is that Tracy is going to be after it in the context of these tort claims. And it's all the more reason as to why we might want to consider bifurcating the discovery on the tort claims. Because if we're going to get into both discovery as to the coverage for the underlying liability actions and at the same time dealing with discovery as to the insurer's handling of the claims and whether that rises to the level of tortious conduct or not, that just multiplies exponentially the privilege issues we have and the protection issues we have as to the second category of information in terms of keeping it out of the hands of the underlying claimants.

So, you know, it's going to be tough enough dealing with the protective order and privilege issues as it relates to the claims for which coverage is sought without having to toss into the mix providing protection against the type of discovery that I would expect the policyholders are going to want to do with regard to their tort claims against the

insurers.

MR. COPENHAVER: And the concern I've got with this, and I'm already sensing that we're going to have this problem, is that part of the basis for denial of coverage is an allegation that the insureds had some knowledge about some problems with regard to Dr. Hansen and, therefore, should have foreseen that every claimant that has now brought a claim was going to bring a claim. We need to be able to do some discovery as to why they formulated that decision to deny coverage and how that's a basis for their decision to deny coverage, as well as to why that is -- they bring one claim in one lawsuit and they claim it's related to a lawsuit that happened two years earlier, how does that relate to all the other claims? There's discovery that's going to relate to the coverage issues, summary judgment, that -- it's going to have to happen. And we're going to need to see some of these files in order to defend those claims. It's not, as I think Mr. Spevacek suggests, totally related to a bad faith claim. I don't think you can put it in that one hole. It relates to coverage. And we are going to seek that information.

So that's the concern we have about this phasing discovery is you can't pigeonhole everything into bad faith. We might be able to do that with experts. I'm happy to do that. If we can save money, postpone that, we've already structured that in our joint pretrial report I think for that

very purpose. But to limit our ability to get the information as to why the insurers are denying coverage and how they're interpreting the policy and how they're interpreting the facts that they're applying to that, uh, we're going to need that information. And that's the concern I've got with this idea of, well, you're not going to do any discovery until we do our summary judgments. That just isn't going to work.

THE COURT: Mr. Ramirez.

MR. RAMIREZ: Thank you, Your Honor. HealthTech and Patten take the same position as Mr. Copenhaver and the Hospital policyholders. I guess one of the additional points to make is efficiency, and a lot of -- a lot of the witnesses that we're talking about either taking depositions or even through written discovery, um, it would be duplicative to have them, in a phased type of discovery setting, appear to testify on the factual basis that the insurers want to set up their motion for summary judgment and then have them come again and be deposed on our issues. It just seems like even at trial where we have the one-up/one-down rule, if we've got a witness who's got evidence as to both their claims and defenses and our claims and defenses, it seems most efficient that we conduct that deposition and get all of the evidence before us in that one event.

The other issue, too, is the unique nature of the rescission claim. My understanding is that the Hospital is

now, because of the rescission effort that UMIA has taken, is considering amending its pleadings now to bring its own bad faith claims against UMIA. So to the extent there's evidence that's necessary to defend against that rescission claim, that's also going to go to Mr. Copenhaver's bad faith claim. So, like he said, trying to put these into separate buckets is going to be almost impossible to do.

MR. SANDS: May I, Your Honor?

THE COURT: Mr. Sands.

MR. SANDS: On that last piece, Mr. Copenhaver and I have discussed this. Mr. Ramirez indicates that there is no bad faith claim pending. All I can say is that in the claim filed against UMIA by the Hospital, paragraph 41, as a result of -- or UMIA's unreasonable acts and bad faith misconduct have caused damages to the, the group, and so I don't know how I could read that and not anticipate that there's a bad faith claim there. It would be irresponsible of me to do that.

So my read of the pleadings is that there are bad faith claims asserted by both the Hospital, HealthTech, and then their -- Mr. Patten and Dr. Hansen. But where I do see -- I actually agree with Mr. Copenhaver that development of the factual bases for UMIA's position that, for example, under our policy a records request is a claim if that records request is made under circumstances that the insured knew or should have known that a claim could be made. So there's no

factual dispute, for example, on some of them that, by way of example, records requests were made. The discovery might go to was that records request made under the circumstances indicating that the Hospital and HealthTech knew or should have known that a claim would be made.

And so I don't disagree with Mr. Copenhaver that there is certainly a convergence of evidence on those two things. However, bad faith litigation, tort litigation against an insurer is a whole different animal. And what we get, and I live in this world, for better or for worse, we get these unbelievably invasive 30(b)(6) notices going less to the claims and more to how you run your business, how you run your claim department. We routinely deal with things like requests for people's personnel files and compensation plans and things that really have more to do with them trying to prove a tort claim based on how the insurance business is run rather than let's get to the issues involving these claims and the coverage component. So that is where the discovery becomes very invasive and very expensive and very time-consuming, in my experience.

So that is an area where I do see bifurcation would be make sense. Let's put on ice that kind of discovery that is collateral to what happened with these claims, and they would be entitled I believe to the evidence as to why we do think those, for example, claims were made during our policy

period under circumstances that would lead a reasonable person to believe that a claim would be made. So that's where I could see some distinction.

MR. SPEVACEK: Mr. Sands makes the point that I was going to make, and actually sitting here listening -- there's always a benefit just to sit and listen every now and then. It sounds like we're actually not as far apart as we may think we are. For example, I think we've made progress that we all seem to be in agreement that there's no need to identify experts on bad faith at the same time we're identifying experts on anything else we need to identify experts on, because it could be that we won't even get to that point. If the Court finds there's no coverage for any of these things, the bad faith claims go away.

And I also agree that we're not in any way trying to limit the policyholders from doing discovery as to the bases for the decisions to say that we're not going to provide a defense, we're going to defend under reservation of rights, we think we've got no coverage. It's this type of additional tort-only discovery that mucks things up. Every claim you've handled involving a hospital for the last 20 years, turn over every piece of paper you've got. Of course, we're not going to be doing that voluntarily, and so we're going to be in the front of you or a magistrate arguing what constitutes reasonable discovery on other claims, other cases, you know,

whatever, where our people went to school, where they took CLEs from, that sort of thing.

So that's what we're trying to section out here. Let's focus first on the claims that were tendered for coverage, are they covered or not. And even if the Court finds that they are covered, you may wrestle with it so much as to whether -- what the decision is, you may say: Look, there was a reasonable basis for taking the position they did. I can't see bad faith going forward under these circumstances. I ultimately found they had coverage, but I had a hard time deciding that they do that. Well, that's not bad faith.

So let's get the coverage part of this resolved first, and then let's deal with those issues that relate exclusively to the tort claims.

THE COURT: Well --

MR. RAMIREZ: One more quick note, Your Honor. I apologize this is going on so long, but, for example, the underwriting file, we've already -- and I think it's already part of the proposed scheduling order. That's a key issue for us, and it's going to have both the bad faith components and, you know, the predicate for whether or not there's coverage under these claims that have been submitted to the insurers.

And I, too, like Mr. Sands, live in this world. I'm a policyholder representative, and I can assure you I have never issued those types of discovery requests. I don't see

how they're helpful in these type cases. What you are looking for is, you know, what the underwriters typically do on these types of risks, what they intend to do, what information they had, and the decisions they made. And, I mean, that is fair game in determining whether or not the decision to deny coverage or -- in our case flat-out deny, in their case not agree to indemnify but only defend, whether or not those were reasonable. And I think that's something that we should be entitled to discover. And from what I'm hearing so far, it sounds like they're not saying we can't do that. So I agree with Mr. Spevacek that we may not be as far off as we started off at.

THE COURT: I am sure that there will be questions that arise during the discovery phase either if we phase it or we do not. On the one hand, if it's -- if there is no phasing of the discovery process, it seems to me that we are essentially trying this case as a noncomplex case, and we're just imposing some deadlines the Court is going to put on the parties to complete their discovery, and it just -- everything is fair game at that point, and it -- except, and I haven't heard any mention of it, we're all aware that the rules were amended and December 1 went into effect, and it seems to me in terms of many of your concerns, Mr. Sands and Mr. Spevacek, that the issue of proportionality and the way that discovery is conducted, the old rules don't apply anymore, and I think

you're entitled to rely upon that, as is -- as are the defendants in this case to the extent that they're being sued by other parties in federal court in terms of discovery. And I think the parties are well aware of the need that anything potentially having some relation to the case is no longer the rule, and we're going back to the time when we're looking for relevant evidence. And so there is a standard that's going to have to be met.

I agree, I think there should be phased discovery in this case. I think it will assist the Court in terms of understanding the issues at the heart of this case and allows examination of the plaintiff's cases and UMIA's defenses that they are asserting as well.

Now, the issues raised by Mr. Ramirez and Mr. Copenhaver, I think Mr. Sands at least has signaled that many of those are just concerns at this -- at this point as to what would be available to them in discovery and I think can be hashed out in the process of discovery that will take place.

Mr. Spevacek, does the plaintiff have any thought about the phasing and how that needs to be incorporated into this order?

MR. SPEVACEK: Yeah, Your Honor, I would think that if the Court put in the order a generalized statement that there will be phased discovery and that discovery relating

exclusively to the tort claims of bad faith asserted by the policyholders against the various insurers will be phased and will be held at some point in the future.

And I honestly think that it doesn't make any sense to begin it until there's been a final resolution of whether there's coverage for this or not because there are three ways that this could go. One would be the Court finds there's no coverage, in which case there's no sense talking about bad faith anymore because our denials would have been proper. The second would be the Court finds, yeah, there's coverage for some of these, maybe not coverage for others of them, and I find that it was a close call, but I'm still going to say that maybe a couple of the three cases you've got to cover, or maybe three or four of them you don't have to because there are individual circumstances. But in the course of going through that process the Court determines, you know, there was a reasonable basis for the decisions that the insurers made, and that's the threshold question as to whether we go forward on bad faith, in which case we don't go forward on bad faith in that circumstance either. Or the third would be the Court was so appalled by the decisions the insurers made, it was bad faith, discovery can go forward. And we don't think that's going to happen.

But I think you could structure an order that would say that discovery relating exclusively to the tort claims

asserted by the defendants and third-party plaintiffs against the insurers will be phased and will be conducted after the conclusion of the issues on the merits on plaintiff's claims for coverage and the counterclaims asserted by the insurers for coverage. So let's discover it. Let's determine coverage first. Then we'll have another Rule 26(f) meeting and Rule 26(f) report if the Court thinks that bad faith should go forward.

THE COURT: I agree. I think the order should be structured that way.

MR. COPENHAVER: Your Honor, I don't have a problem or concern as long as, as Mr. Spevacek mentioned, we're talking about discovery exclusively related to bad faith will be delayed. Because clearly there is discovery that relates to both, and I'm going to be surprised if we're not back in front of Your Honor or a magistrate having this decision which phase is this in. I promise you we will work in good faith with all counsel to not do that, but I have that concern.

MR. SPEVACEK: Yeah, I agree with Tracy. We did actually pretty well on putting the joint report of the meeting together, so it gives me some hope in thinking that we can do pretty well on the other things that happen to come up. But there's no way that the Court in an order at this point can account for every conceivable possibility that might happen down the line. So we just need a broad guideline, and

then we'll work as things come up as to how we think it fits within that broad guideline.

THE COURT: I think that's all we can do.

So we'll see the protective order on or before the 25th of January. We will have phased discovery in this matter.

Electronic discovery is an issue that you talked about, and defendants indicated a preference. Any thoughts about that?

MR. SPEVACEK: Go ahead.

MR. RAMIREZ: Well, since it was my language that was inserted, our concern is in prior litigation we find that insurance companies tend to maintain their claims files in electronic format, and so what we run into is when we ask for the production of the claims files, they will print out their claim files, scan them, and we get a 5,000-page PDF that's not searchable. I mean, that just tends to happen quite a bit. So to avoid that we inserted our standard ESI protocol into the scheduling order, and I believe -- I've heard back from several of the attorneys that they could work with it but that they needed to confer with their clients to make certain that their IT folks were able to comply with it. I have not heard anything since those e-mails, so maybe we can hear from them. But the language came from us.

MR. SANDS: Your Honor, on behalf of UMIA, there are

limits to what we can and can't do in terms of turning files over. In speaking with Mr. Ramirez, I understand that what they want is this stuff in a format that is --

THE COURT: Searchable.

MR. SANDS: -- searchable, and I don't know what the technical -- technological capabilities of my client's system might be. I -- we are able to, at least have been in cases these days, to convert PDF documents to searchable documents. So I'm not suggesting Mr. Ramirez is wrong. I'm just saying I think there is a way to do that, at least in many circumstances. But the more relevant point is this. I don't know what the technological capabilities of my client's electronic file system might be, so it's very difficult for me -- and certainly I've asked them to look and see what formats we can produce these things in, but I'm really not today in a position to say we will produce them in the format that Mr. Ramirez wants.

THE COURT: When can we get that resolved?

MR. SANDS: Well, one of the threshold questions is do we need to produce the entire claim file as a matter of Rule 26 disclosure. I don't think we do, but we're ultimately, I think, going to get a request for the entire claim file, so we're working on that. I think I can have that resolved, I would hope, within a week. They're looking at what they can and can't do.

THE COURT: What about the 25th, again, of January?

MR. SANDS: I'll -- I'm sorry.

MR. SPEVACEK: No, go ahead.

MR. SANDS: I'll work with -- yes, I'll report to my client that that's the date, and if I have a problem, I'll let everyone know. I shouldn't, but I would think we could do it by then.

THE COURT: All right.

MR. SPEVACEK: Here's what I think the issue is, Your Honor, that -- what Mr. Ramirez proposed is extremely specific, TIF, Type 4, 300 DPI resolution, you know, et cetera. The issue, I believe, is whether it's searchable. As opposed to the issue being a certain type of format or technology, the issue is that it's searchable. And what I was concerned about in dealing with my clients was that in an effort to provide something that's searchable, it might not be the exact technical requirements that are written into the report by Mr. Ramirez and his client.

And so I certainly like the idea of documents being produced in a searchable format. What my client is looking at is whether a specific type of technology to make that happen can be imposed upon it or not. So if -- the issue isn't the nature of the technology. The issue is can you search the stuff, as opposed to being provided with a thousand pages -- I'm sorry -- as opposed to being provided with a

thousand pages of stuff that is just printed out on paper. And I'm all in favor of searchable. I'm just still trying to figure out from talking to -- my -- because I can't talk to my client's IT people. I can't even talk to my son about how to program apps on my iPhone. What we're working with is is the technology that's imposed upon us in this agreement something that's compatible with our systems, or can we produce searchable documents in some other format.

MR. RAMIREZ: Your Honor, real quickly. It just -- it wasn't just searchability. It's also we want the data that's behind the documents. So to the extent that their files are being produced in native format when we could see the actual history of documents that were issued, I think according to the Sedona principles, which I think this is where this comes from, it seems to be the standard for production of ESI. So that's why we've included and we've requested that documents that are produced in this case, not just the claim file, but any documents, e-mails, drafts of letters, to the extent there's any Excel spreadsheets, things like that, be produced subject to these principles that have been adopted by most federal courts.

THE COURT: Why don't we refer to a response on or before the 25th of January consistent with the Sedona principles.

MS. KELLAM: That's fine with Lexington, Judge.

Thank you.

THE COURT: Very well.

The parties have provided a paragraph dealing with Rule 26(f)(3)(E) which responds to our request. "In an effort to encourage coordination and to avoid duplication and redundancy of discovery, all interrogatories, document requests and requests to admit served by any party inure to the benefit of and are enforceable by any other party. The settlement, release or dismissal by any means of a party propounding such discovery will not limit the use of responses to discovery, nor will it eliminate the obligation of the responding party to supplement its responses to discovery as required by Rule 26(e)."

Is that -- everybody on board?

MR. SPEVACEK: Yes.

MR. COPENHAVER: Yes.

MR. SPEVACEK: We talked about this at length during the conference. This was our suggestion.

THE COURT: I've run into problems in that whole area, and if we can avoid them at this point, that's a good idea.

MR. SPEVACEK: We're just trying to make sure that -- there's three different insurers here -- that all three insurers don't feel they have to ask the same interrogatory question over and over again, because one

insurer might settle out and, thus, the need to supplement as to that insurer's question will then go away.

MS. NALTSAS: Your Honor, Lexington agrees with this proposed paragraph.

THE COURT: Very well.

MR. SANDS: As does UMIA, just subject to our discussion earlier about any possible need for protection. Some of the information that might have been disclosed by some party in discovery responses that should not be given at all to another party, and we don't know what they're going to look like exactly yet, I would just put that proviso in there, but we're certainly on board with the idea that everybody gets the discovery and can rely on it.

THE COURT: Very well. You've agreed also to a number --

MR. SPEVACEK: Yes, Your Honor.

THE COURT: -- 35 written, including all discrete subparts. And again there's a good faith standard.

Homeland anticipates it will be submitting its interrogatories on or before March 1st, 2016.

MR. SPEVACEK: Yes, Your Honor.

THE COURT: Same for HealthTech, Patten, and PVHC and Dr. Hansen.

MR. RAMIREZ: That's correct.

THE COURT: Is Dr. Hansen still living in Powell?

MR. COPENHAVER: No, I think he's in Montana, Your Honor.

THE COURT: Oh. All right.

MR. SANDS: Your Honor, if I may again.

THE COURT: You anticipate sending them a little earlier.

MR. SANDS: I think it's a mistake. I think I wanted to go with March 1st as well, so I'm not sure how I ended up failing to make that correction. That's my fault, but we'd like to have that be March 1 as well.

THE COURT: Very well. And Lexington, you're just sitting on this thing until May 1st. What's --

MS. NALTSAS: So as not to duplicate efforts, we'd like to sort of see what the discovery pans out as, and we may not have to send the same interrogatories twice. So we wanted to see what is asked by the other parties, and then we can supplement where needed.

THE COURT: All right. I think we have time. May 1st is fine.

The parties have listed the oral depositions that they anticipate -- let me ask counsel for the plaintiff, Mr. Spevacek. Who are these folks? I guess is the nature of my question. I don't know -- are they related to the first phase?

MR. SPEVACEK: Yeah, they're all related to the first

phase. Brad Mangum and Scott Wilson are the two whistle blowers that are referred to in our complaint. The rest are Hospital staff members --

THE COURT: All right.

MR. SPEVACEK: -- of some fashion or another.

THE COURT: All right. And Mr. Copenhaver, I assume that your list, which is a little longer, may be not in anticipation of phased discovery at this point.

MR. COPENHAVER: Um, it wasn't in anticipation of phased discovery, you're correct, but I don't think it would change. Those people listed are the people that wrote coverage opinions or decisions that we received from the various insurers. So, I mean, they're -- they're the face of the company in making the decisions on coverage, so they're going to be deposed. And I would say that probably in light of the rescission position of UMIA and the disclosure of information to them, I'm guessing we're going to need to add, actually, possibly a couple of people from the brokerage firm that they partnered with in making the proposal to Powell and that information was disclosed to them and through them. So I would just represent that they're probably going to be added, and possibly a representative of the insurance agency that also submitted information to both One Beacon and UMIA.

MR. SPEVACEK: Your Honor, we never expected these lists to be exclusive at this stage of the proceedings and --

for example, we didn't anticipate that we needed to list generically the idea that there might be 30(b)(6) witnesses, and we would reserve the right to do that, too, but I don't think anyone sitting here now is saying, all right, these are the names you put down, these are the only depositions you get to take.

THE COURT: All right. I just thought any disclosure we could have today would be helpful to you all, frankly.

And UMIA, a much longer list, similarly.

MR. SANDS: Yes, but there's a lot of duplication, Your Honor. Five of those deponents proposed on page 13 are also on the list -- on Homeland's list. And I, I did just generically list 30(b)(6), but I agree with Mr. Spevacek that certainly wasn't -- I mean, that was belt-and-suspenders on my part, but I absolutely agree this certainly wasn't meant to be an exclusive list. And I do think these go to -- most of these would go to the coverage piece.

THE COURT: All right, good. Like every case that you have, events occurred -- many of these events occurred several years ago. You'll probably be dealing with the problems of people leaving the companies or changing jobs or moving away or retiring or being terminated.

MR. SPEVACEK: That's why we built so much time into the depositions, Your Honor, because we happen to know that, for example, Brad Mangum and Scott Wilson are not within the

jurisdiction. It's not going to be easy to arrange these depositions. There's going to be a lot of travel involved.

THE COURT: And probably track down some documents, anyway, that they'll need to refer to during their deposition testimony. That's the reason I'm glad I'm a judge and not a lawyer.

I can't anticipate in this case when you'll have new parties in this case. I'm not sure, listening to you, that it's really important at this point. And so I'm going to strike that date with regard to new parties in our order, which we put down March 1st. You don't know, Mr. Copenhaver, whether or not we'll -- who and when we'll have those, and those settlements are ongoing probably over the next couple of years.

MR. COPENHAVER: You're absolutely correct, Your Honor. Thank you.

THE COURT: Amendments to pleadings, there may be some. Do you think those, at least the ones that may come to mind, could be done by March 1st, 2016?

MR. COPENHAVER: Um, yes. Mr. Sands referenced, uh -- we had a claim for breach of contract, and there was a reference in there to it being unreasonable and in bad faith. I didn't intend that to be a separate bad faith claim, but in view of their position on rescission, uh, it's likely we will amend our pleadings to actually assert a bad faith claim.

THE COURT: All right. Mr. Sands, you were prescient.

MR. SANDS: I'm sorry, Your Honor?

THE COURT: You were prescient. You --

MR. SANDS: Yes.

THE COURT: Any other amendments that anybody is seeing? Doubt it.

MR. SPEVACEK: New claimants keep coming forward all the time, and we tried to plead the complaint in a manner so that we didn't have to continuously be re -- amending it all the time. So it's not our intention to do so unless we hear from the policyholders that a finding of no coverage isn't going to relate to someone who is specifically identified by name in the complaint, in which case then every time a new claim is tendered to us, and we're still getting them, we would have to ask to amend the pleading to include those claimants. And sometimes these claims come to us in a way that we can't identify them by name in the complaint, you know, because they're not suits yet, they're just notices to the -- to the state of an intent to bring suit, and we're prohibited from disclosing those names in an open pleading like this.

So I thought we talked about this on the call, but I'm having a little bit of a brain freeze as to what our resolution to it is. Did we agree that as new claims are

tendered they're considered part of the litigation, or do we have to actually amend pleadings to include them?

MR. RAMIREZ: My recollection, Mr. Spevacek, was that we had different opinions on that. I think you were the only one that said you had drafted your pleading to encompass any future changes, and we took the position that in order to make sure that this action was binding on all possible claims that are out there that the parties should list the new claims or amend the pleadings to include the new claims that are filed.

One of the things that we talked about was the potential running of the statute of limitations, so that we believe that as of November -- towards the end of November I think was potentially the running of the statute of limitations, so we may have the known universe of claims that are out there already. But I think our position is that, just to be thorough and make sure this action is binding on all parties, that we should include all new plaintiffs.

MR. SPEVACEK: Could I propose something to the Court, then, that would take some burden off of the Court?

THE COURT: Sure.

MR. SPEVACEK: Can everyone agree that to the extent the only amendment is going to be to identify a newly tendered claim since the filing of this complaint as one that is also subject to the declaratory judgment action that we've commenced, that we can make that amendment without leave of

Court? We don't have to bother the Court with it?

MR. SANDS: And I would agree with that procedure, Your Honor. Because if we have to run in every time, it's going to cost, obviously, time and expense and the Court's time. And it would need to be included in our declaratory judgment claim as well and our coverage -- our coverage case because all of the claims that come in are going to be -- going to fall within that grouping.

And the other thing I guess I would say is that the statute of limitations piece, I very much appreciate what Mr. Ramirez has said, but the running of the statute of limitations oftentimes does not prevent people from suing anyway. So I don't necessarily agree that we have a known universe of what might come in.

MR. SPEVACEK: Your Honor, I'd also be willing to stipulate that unless someone wants to plead something new in response to a newly tendered underlying claim, that existing answers, counterclaims, crossclaims, and third-party complaints can stand as in response to the amended complaint. Otherwise -- this just represents, printed on both sides, the pleadings so far, answers, complaints, counterclaims, third-party complaints. And if we keep having to redo the same thing -- I mean, I understand it's just word processing, but if all we're doing is just amending the complaint to add a newly tendered claim that came in subsequent to the time that

we filed the document that's already on file, I don't care whether I see exactly the same answer back in response to it that's already in my file.

MR. COPENHAVER: And I don't have any problem with that, Your Honor. I'm all about keeping it as simple as we can. But I just want to -- my understanding would be is if, for example, Homeland amended its complaint to add a party, that unless otherwise specifically noted, the basis for their denial of coverage would be limited exactly to what they have previously pled, and there would be no new claims sprung on us or allegations. And if that's the case, it will need to be addressed in the amended pleadings.

MR. SPEVACEK: We're fine with that, Your Honor.

THE COURT: Very well.

MR. SPEVACEK: If we're raising some new grounds for denial that we haven't already pled as to a new claim that was tendered to us for defense or indemnity after we had filed whatever pleading is already on file, then we understand we've got to go through the normal process of saying we want to add something new. But if all we're adding is, hey, here's another person we're adding to the litany of people who have made claims, and we think they've got no coverage for the same reasons we've already pled, I'd like to just be able to add those names without having to do anything else.

MR. RAMIREZ: Your Honor --

THE COURT: So pursuant to Rule 15, huh?

MR. SPEVACEK: Yes, Your Honor.

MR. RAMIREZ: Your Honor, HealthTech and Patten would have no objection to that.

MS. NALTSAS: That's fine with Lexington as well, Your Honor.

THE COURT: Thank you. I believe plaintiff's expert witnesses -- you've indicated a date of January 6th, 2017.

Or are these our dates, Sean?

MR. SPEVACEK: Yeah, and actually the form talks about plaintiff's or that party who bears the burden of proof on an issue.

THE COURT: And counterplaintiffs.

MR. SPEVACEK: Yeah, right. So we're sort of looking at it as like first expert disclosures and second expert disclosures. So it could be that I'll be making some expert disclosures. I would expect that HealthTech and the Hospital will be making some first expert disclosures. But if it's an issue that you are using an expert to help meet your burden of proof, then, yes, we have that first deadline as January 6th of 2017.

MR. COPENHAVER: Your Honor, I guess I just -- now that the Court has determined we ought to do phased discovery, I don't know that that deadline is going to work for designating experts on behalf of the defendants as it relates

to bad faith. Because if we're not allowed to conduct discovery on it, we're not going to be prepared to do experts either.

THE COURT: No, we're not requiring you to.

MR. SPEVACEK: Yeah, there was never any intention that -- given the conclusion that we'll have phasing, I never expected that you were going to have to do bad faith experts on that date.

MR. COPENHAVER: It's just not what that order says and our agreement says, so I wanted to make it clear on the record. So that will not apply to our designation of experts.

THE COURT: No.

MR. COPENHAVER: Thank you.

MR. SANDS: And presumably the same from UMIA's standpoint. We're being sued for bad faith. We would do whatever it is the Court ultimately finds is going to be done with bad faith experts.

THE COURT: Correct. They would be listed after we've ruled on any motions that are going to be filed in the near future and later on.

Counterdesignations, uh, to the first phase experts would be on March 7th --

MR. SPEVACEK: Yes, Your Honor.

THE COURT: -- 2017, I think is your date.

The parties have indicated -- this would be all fact

discovery on first phase would wind up on May 5th, 2017.

MR. SPEVACEK: We have -- November 1 is fact discovery, because we're distinguishing between fact discovery and expert discovery.

THE COURT: Okay.

MR. SPEVACEK: So fact deposition -- I'm sorry for not standing up, Your Honor. Fact depositions would take place between May 1st and November 1, and the close of fact discovery would be November 1. That's what's in the agreement. And then we would move into expert discovery. So first expert disclosures then on January 6th, second expert disclosures on March 7th. First expert depos would be done in that time period between January 6th and March 7th. Those would have to be done by March 7th. And second expert depositions would have to be done by May the 6th, with the close of expert discovery on May 6th. So we're looking for the close of all discovery, fact and expert, on May 6th of 2017, but the close of fact discovery on November 1st of 2015.

THE COURT: '16.

MR. SPEVACEK: '16.

THE COURT: '16.

MR. RAMIREZ: Your Honor, just briefly. Just to be clear, the dates that Mr. Spevacek has just proposed, that's the end of Phase I only.

MR. SPEVACEK: Right.

THE COURT: Yeah, that's all we're talking about.

MR. RAMIREZ: Okay.

THE COURT: Yeah, it would probably be helpful for us to amend our -- or put in some sort of -- something in the title of this document that you will be getting that would reflect that this relates to Phase I, initial pretrial conference as to Phase I.

Now, dispositive motions.

MR. SPEVACEK: The thing that we put in the agreement, Your Honor, was that we didn't want to put any artificial deadlines on the ability to make dispositive motions, they could be made at any time, and if a party believes that it's premature because discrete discovery needs to be done, then they can make the showing under 56(f), but we did not want to say that we were going to wait till the close of any specific discovery period to bring any dispositive motions that could be brought.

THE COURT: Can we put an outside date of May 19th, 2017?

MR. SPEVACEK: That's fine with us, Your Honor.

MR. SANDS: Yes, Your Honor.

THE COURT: And maybe we should put a note in here that dispositive motions may be filed at any time prior to May 19th. And responses will be filed according to the Federal Rules of Civil Procedure or within the time limits

prescribed by the Federal Rules.

MS. KELLAM: Thank you, Your Honor.

THE COURT: Did you get that, Sean? Thank you.

On Phase I do you see a -- well, let me think about that for a moment. Let's assume for the moment that your dispositive motions are denied by the Court and I find that there are issues -- material issues of fact that need to be tried on your motions. At that point counterplaintiffs in this matter would be -- have all of their claims that we would begin discovery on. Correct?

MR. COPENHAVER: That would be our opinion, Your Honor.

MR. RAMIREZ: Your Honor, with respect to the tort claims, you're saying?

THE COURT: That's correct.

MR. RAMIREZ: Yes.

MR. SPEVACEK: Yes.

THE COURT: And so there's really not much point in me at this point setting a joint final pretrial and trial schedule. We would have a later -- our order should indicate that there will be a subsequent Rule 26 meeting.

MR. SPEVACEK: Yeah, that makes sense, Your Honor.

THE COURT: All right. I think I've covered everything on my agenda at this point. Is there anything else that you were thinking of or questions that we need to discuss

this morning by and between the parties?

MR. RAMIREZ: Your Honor, I apologize because I have not conferred with opposing counsel, and I've just been thinking about this case for the last few days, and so I'll bring this out to them to think about, and maybe we can address the Court about it at a later date.

This case seems to me to be a case where the parties should be aligned or realigned. I'm sorry. Because the way it stands now with all of the parties -- looking at who's sitting at this table, for instance --

THE COURT: What I've thought about that is maybe that UMIA should be treated as a plaintiff in this case.

MR. RAMIREZ: Or us as the plaintiffs and all the insurers as defendants.

THE COURT: Right.

MR. RAMIREZ: Some way to get everybody on the same -- or on opposite sides of the beams where they really should be. So I throw that out there just for consideration. But, again, I apologize for bringing this up at this point.

THE COURT: Something you might want to discuss amongst yourselves.

MR. SANDS: I actually don't disagree. I didn't even know what to call my pleadings.

THE COURT: Well, I can tell you it really created problems for me to try and -- constantly having to go back and

try to sort out what was going on, and I'm not sure I have it down yet.

MR. SPEVACEK: It makes sense to me, too, Your Honor.

THE COURT: All right.

MS. NALTSAS: As it does for Lexington. Thank you.

THE COURT: All right.

MR. COPENHAVER: The only other thing I'd bring up, and have not discussed it with counsel, not really given it a lot of thought, but -- I don't remember if it was Jon or Chuck brought it up, but it sounds like we already are going to have an issue -- because we are going to want the claims files, and I heard one of them suggest that they weren't going to give us all the claims file. And maybe we can talk about that because I don't know what, if that's the case, what they're intending to hold back, but as long as we have Your Honor here and if there's a way to resolve it, I'd just as soon do it rather than wait to do it. And so I'm not even sure what they're talking about at this point.

MR. SANDS: Well, I think I'm the guilty party. What I said is I don't think we're compelled under Rule 26 to disclose them. I think Rule 26 requires us to disclose things that we're going to use in our defense. I haven't made any decision about it. I did not mean to say -- and if I did, I was jumping ahead -- that we aren't going to do it or that they would not be available pursuant to a Rule 34 request. So

my point was I want to be clear that I do not believe we're compelled if we're not going to use things in our defense to produce them under Rule 26. Not saying we don't -- we've made a decision about that, but that was my point.

MR. COPENHAVER: If that's the case, that's fine. I didn't understand it that way. Thank you. I mean, we will be making a request under Rule 34 for those files.

MR. SPEVACEK: Yeah, we're in the same position. We're not going to produce claims files as part of our Rule 26 initial disclosures because we're not relying upon the claims files to prove the points that we've pled in our complaint. But I don't anticipate a blanket objection to claims files in a request for production of documents or an interrogatory asking to identify documents.

MR. COPENHAVER: Thank you.

THE COURT: All right. Within the next day or so you'll be receiving the order from this hearing. Corrections or elaborations that you feel should go in should be brought to my attention.

I am inclined in this matter to also put in a provision -- tell me if I'm making an error doing so -- incorporating into this order the joint report of meeting.

MR. SPEVACEK: I have no objection to that. I think the only edit was that Mr. Sands wanted until March 1 instead of February 15th to serve interrogatories.

MR. COPENHAVER: You know, we've made several revisions to that, Your Honor has, and I just -- I don't know if we're helping by doing that or confusing things by doing that.

THE COURT: Yeah.

MR. COPENHAVER: For example, the phased discovery, the fact that fact discovery only, you know, relates to the underlying claims not the tort claims. We've got the electronic information stuff in there. I'm not definitely opposed to it. I'm just speaking out loud, Your Honor, as to whether we're helping ourselves by doing that or not.

THE COURT: Maybe I should -- well, this order then that I issue should indicate and give you the -- make as a matter of order, anyway, things such as your agreed date concerning furnishing a privilege or a protective order and that kind of thing. We can do that as well.

MR. RAMIREZ: Your Honor, I have seen that done on one occasion where the magistrate judge really just marked up our proposed scheduling order and, you know, so the actual order that was in place was his handwriting over the dates that we had. And I don't know if Your Honor's been doing that here, but --

THE COURT: No. I have a separate order that I've been working on.

MR. SPEVACEK: You could also just make a notation in

your separate order that the joint report is attached and represents the agreement of the parties except as modified in this order.

THE COURT: Yeah. I think that would be good language.

Any other things, Mr. Ramirez, come into mind?

MR. RAMIREZ: Not at this time, Your Honor.

THE COURT: Thank you.

Mr. Copenhaver?

MR. COPENHAVER: No. Thank you, Your Honor.

THE COURT: Thank you. Do you see this case -- the alignment of the parties really is probably going to shape -- shape burdens of proof for you to -- something for you to be thinking about. May be not an immediate problem in this matter. I'll look for your thoughts later on on that entire matter.

There being nothing further, we'll stand in recess. Thank you, those of you who traveled from California who are here today, from Denver.

MR. SANDS: Thank you, Your Honor.

MS. KELLAM: Thank you, Your Honor.

MS. NALTSAS: Thank you, Your Honor.

(Proceedings concluded 10:58 a.m., January 14, 2016.)

C E R T I F I C A T E

I, JULIE H. THOMAS, Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 28th day of September, 2017.

/s/ Julie H. Thomas

JULIE H. THOMAS
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
CA CSR No. 9162